

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE KARAS

In the Matter of
ARBITRATION OF DISPUTES

between

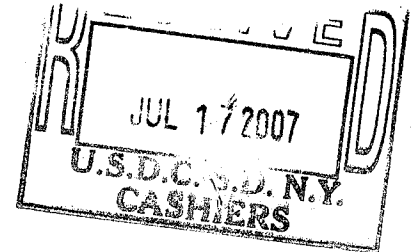
THE TRUSTEES OF THE
UNITE HERE NATIONAL HEALTH FUND AND
THE TRUSTEES OF THE
UNITE HERE NATIONAL RETIREMENT FUND,
Petitioners,

and

SYDNEY A. BUSH CO., INC.,
Respondent.

07 CV 6468

**PETITION TO CONFIRM
ARBITRATION AWARD**



STATE OF NEW YORK)
County of New York) ss.

The Petition of The Trustees of the UNITE HERE National Health Fund and The Trustees of the UNITE HERE National Retirement Fund (hereinafter, the "Petitioners"), by their attorney Mark Schwartz, respectfully shows to this Court and alleges that:

1. I am Counsel to Petitioners herein and am duly admitted to practice law before the Courts of the State of New York and before this Honorable Court and am fully familiar with the prior proceedings had in this matter. I submit this Petition in support of Petitioners' application for an Order confirming the Arbitration Award of Philip Ross (hereinafter, the "Arbitrator"), dated May 30, 2007.

2. The Trustees of the UNITE HERE National Health Fund and The Trustees of the UNITE HERE National Retirement Fund (hereinafter, the "Funds"), with their sole office at 730 Broadway, New York, New York 10003-9511, is an employee benefit plan within the meaning of Section 3 (3) of the Employee Retirement Income Security Act of 1974, as amended (hereinafter, "ERISA"), 29 U.S.C. 1002 (3), established pursuant to an Agreement and Declaration of Trust and by a Collective Bargaining Agreement entered into between the Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC, presently known as UNITE HERE (hereinafter, the "Union"), and employers in the men's and boy's clothing industry. The Funds were created to provide benefits to eligible employees of contributing employers. Employer contributions and income earned thereupon are the sole source of funding. The employees themselves do not contribute to the Funds through union dues or otherwise.

3. Sydney A. Bush Co., Inc. (hereinafter, the "Respondent"), is a party to a Collective Bargaining Agreement dated July 1, 2000 and a Memorandum of Agreement dated June 30, 2006 (the Collective Bargaining Agreement and the Memorandum of Agreement are collectively referred to herein as the Collective Bargaining Agreement) entered into between The Intimate Apparel,

Embroidery, Belt & Allied Workers' Union, Local 62-32, UNITE HERE, the Amalgamated Ladies' Garment Cutters' Union, Local 10, UNITE HERE and the Associated Corset & Brassiere Manufacturers, Inc. The Collective Bargaining Agreement obligates the employer to contribute to the Funds based upon stated percentages of its gross payroll.

4. A dispute has arisen concerning Respondent's obligation to contribute to the UNITE HERE National Health Fund for the period of October 1, 2006 through April 30, 2007 in the amount of \$2,339.95.

5. A dispute has arisen concerning Respondent's obligation to contribute to the UNITE HERE National Retirement Fund for the period of October 1, 2006 through April 30, 2007 in the amount of \$651.39.

6. Pursuant to the Collective Bargaining Agreement, the dispute was referred to the Arbitrator for arbitration on May 30, 2007.

7. After considering the evidence presented at the hearing, the Arbitrator issued an Arbitration Award directing the Respondent to pay the delinquent contributions to the UNITE HERE National Health Fund in the amount of \$2,339.95 and to the UNITE HERE National Retirement Fund in the amount of \$651.39 plus interest and incidental costs, for a total Award of \$3,304.37. A copy of the Arbitration Award is annexed hereto as **Exhibit A**.

8. Prior to the arbitration the Petitioners served a subpoena upon the Respondent directing it to produce its payroll records. A copy of the subpoena is annexed hereto as **Exhibit B**.

9. The Respondent failed to produce its books and records or to appear at the arbitration hearing. At the hearing the Petitioners provided a summary of the Respondent's prior contribution history, which revealed an average monthly payment due to the Petitioners, The Trustees of the UNITE HERE National Health Fund, in the amount of \$53.19 for the period of October 1, 2006 through April 30, 2006 and to The Trustees of the UNITE HERE National Retirement Fund, in the amount of \$14.84 for the period October 1, 2006 through April 30, 2007. These monthly averages were multiplied by the number of months covered by the Arbitration Award. A copy of the summary sheet is annexed hereto as **Exhibit C**, which was reviewed by the Arbitrator.

10. The arbitration award is based upon the summary prepared by the Petitioners and presented to the arbitrator. The Collective Bargaining Agreement provides that all disputes under the contract shall be submitted to Dr. Philip Ross for arbitration and final determination. Article 39(d) of the Collective Bargaining Agreement provides that:

In the event that a party to an arbitration proceeding hereunder shall willfully default in appearing before the Impartial Chairman at the time and place designated by the latter for hearing pursuant to written notice served personally or by ordinary mail, the Impartial Chairman is hereby empowered to take the testimony and evidence of the party appearing and to render his award thereon. Such award shall be final and binding with the same force and effect as if both parties had appeared.

11. The Collective Bargaining Agreement, entered into between The Intimate Apparel, Embroidery, Belt & Allied Workers' Union, Local 62-32, UNITE HERE, the Amalgamated Ladies'

Garment Cutters' Union, Local 10, UNITE HERE and the Associated Corset & Brassiere Manufacturers, Inc. and the Respondent, in Article 39(e), thereof states that:

Any papers, notices or process necessary or proper for confirmation of an arbitration award rendered by the Impartial Chairman hereunder in any Court or for the entry of judgment on any such award may be served upon all parties by mail addressed to the last known address of such party, or to its attorney.

12. On June 8, 2007, the Petitioners served a copy of the Arbitration Award on Respondent by certified mail; return receipt requested and regular mail.

13. To date, Respondent has not paid any part of the Arbitration Award.

14. As a result of Respondent's failure to abide by the Arbitration Award, Petitioners now seek judicial enforcement thereof. As more fully demonstrated in the Memorandum of Law, this court has jurisdiction over Respondent.

WHEREFORE, your Petitioners pray for an Order confirming the Arbitration Award, and directing the entry of Judgment in the amount of \$3,304.37, together with interest from the date of the Arbitration Award to the date of Judgment at the rate of 9%, together with the costs incurred in connection with this Petition.

Dated: July 13, 2007
New York, New York

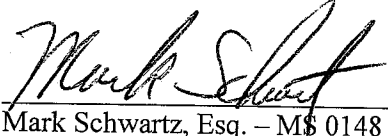

Mark Schwartz, Esq. – MS 0148
Attorney for Petitioners
730 Broadway, 10th Floor
New York, New York 10003
(212) 539-5275

EXHIBIT A

In the Matter of
ARBITRATION OF DISPUTES

between

THE TRUSTEES OF THE
UNITE HERE NATIONAL HEALTH FUND AND
THE TRUSTEES OF THE
UNITE HERE NATIONAL RETIREMENT FUND,
Petitioners,

and

SYDNEY A. BUSH CO., INC.,
Respondent.

FINDINGS AND AWARD
07 – 24 – R

Due notice having been given to the parties, a hearing was held before the undersigned in New York City on May 30, 2007.

A P P E A R A N C E S:

The Arbitrator:	Dr. Philip Ross
For the Petitioners:	Mark Schwartz, Esq. Annie Habeeb Lawrence I. Kleinman
For the Respondent:	No Appearance

FINDINGS

This proceeding was instituted by the service of a statutory Notice of Intention to Arbitrate, in which it was alleged that Sydney A. Bush Co., Inc. (hereinafter, the "Respondent"), is a party to a Collective Bargaining Agreement (hereinafter, the "Agreement"), entered into between The Intimate Apparel, Embroidery, Belt & Allied Workers' Union, Local 62-32, UNITE HERE, the Amalgamated Ladies' Garment Cutters' Union, Local 10, UNITE HERE and the Associated Corset & Brassiere Manufacturers, Inc. (hereinafter, the "Union"), and in which, pursuant to applicable law, the Respondent was notified that unless it applied to stay the proposed arbitration within 20 days after the service of the aforesaid Notice, it would be barred from putting in issue the making of the said Agreement and its failure to comply therewith. More than 20 days have elapsed since the service of the aforesaid Notice at the time of the hearing in this proceeding, held as above stated, and no application to stay this proceeding has been made by the Respondent.

On the basis of the aforesaid Notice of Intention to Arbitrate, Respondent's failure to apply to stay this proceeding, and other evidence submitted, I find that, as alleged by The Trustees of the UNITE HERE National Health Fund and The Trustees of the UNITE HERE National Retirement Fund (hereinafter, the "Petitioners"), the Respondent is obligated to comply with the terms of the Agreement with the Union; that, among other things, the Agreement in Article 33(a) thereof provides as follows:

Upon the request of the Union, a member of the Association shall submit for examination by a representative of the Union all of its books and records, including the books and records of its affiliates and subsidiaries, for the purpose of determining whether such member, or its affiliates or subsidiaries, have complied with the provisions of this Agreement. Reference above to books and records shall be construed to mean any and all books and records, without restriction, by which compliance with the provisions of this Agreement may be ascertained and verified by the Union.

A subpoena was duly served on the Respondent requiring it to produce at the hearing all of the relevant books and records from which could be computed the exact sums due to the Petitioners for the period of October 1, 2006 through April 30, 2007.

From the evidence made available to me, I find that the Respondent failed to make the following contributions for the period of October 1, 2006 through April 30, 2007 in the amount of \$2,334.95. That demand for payment was duly made and refused and that there is now due and owing from the Respondent to the Petitioner, The Trustees of the UNITE HERE National Health Fund, the sum of \$2,334.95.

From the evidence made available to me, I find that the Respondent failed to make the following contributions for the period of October 1, 2006 through April 30, 2007 in the amount of \$651.39. That demand for payment was duly made and refused and that there is now due and owing from the Respondent to the Petitioner, The Trustees of the UNITE HERE National Retirement Fund, the sum of \$651.39.

The Award which follows does not intend to and does not include any sums that may be due to the Petitioners for any period other than stated above, nor for any sums due to the Petitioners for the period stated above, and which would be shown upon an audit of the Respondent's books and records for such period, the results of such an audit not being available to me as Arbitrator due to Respondent's failure to comply with the Subpoena directed to it.

The Agreement provides that:

The Employer is obligated to pay all the amounts due, including interest and legal fees incurred.

The Respondent having failed to perform and comply with the terms and provisions of the Agreement, as hereinabove found, and such default having resulted in expenditures for the Petitioners and as provided for in the Agreement, I direct that the Respondent pay to the Petitioners, such expenditures as follows, each of which I find to be reasonable in amount: Arbitrator's fees, \$50.00; legal fees, \$75.00; for total costs of \$125.00 to be paid by The Trustees of the UNITE HERE National Health Fund and \$125.00 to be paid by The Trustees of the UNITE HERE National Retirement Fund.

In addition, I direct that in compliance with the provisions of ERISA, Section 502 (g) (2), the Respondent pay to the Petitioners "interest on the unpaid contributions" plus "an amount equal to the greater of: (i) interest on the unpaid contributions, or (ii) liquidated damages provided for under the [Petitioners'] plan in an amount not in excess of 20 percent." The Petitioners' plans do not provide for liquidated damages but provide for interest "at an annual rate equal to 9%." Therefore, I direct that in accordance with the statutory formula, Respondent pay Petitioners, The Trustees of the UNITE HERE National Health Fund the sum of \$53.19 and The Trustees of the UNITE HERE National Retirement Fund the sum of \$14.84, in interest on delinquent contributions which sums are hereby awarded against the Respondent in favor of the Petitioners.

AWARD

Accordingly, it is hereby determined and awarded as follows:

1. There is due and owing from the Respondent to the Petitioner, The Trustees of the UNITE HERE National Health Fund, the sum of \$2,334.95, by way of unpaid contributions; the sum of \$53.19, by way of interest provided for under ERISA, Section 502 (g) (2); the sum of \$50.00, for Arbitrator's fees and the sum of \$75.00, for legal fees; for a total amount of \$2,513.14, in favor of the Petitioner and which total amount the Respondent is to pay Petitioner forthwith.
2. There is due and owing from the Respondent to the Petitioner, The Trustees of the UNITE HERE National Retirement Fund, the sum of \$651.39, by way of unpaid contributions; the sum of \$14.84, by way of interest provided for under ERISA, Section 502 (g) (2); the sum of \$50.00, for Arbitrator's fees and the sum of \$75.00, for legal fees; for a total amount of \$791.23, in favor of the Petitioner and which total amount the Respondent is to pay Petitioner forthwith.

I further direct that the sum of \$100.00, in Arbitrator's costs be payable to the Arbitrator, \$50.00, by the Petitioners and \$50.00, by the Respondent.

Dated: 5/20/07
New York, New York



PHILIP ROSS, ARBITRATOR

EXHIBIT B

In the Matter of
ARBITRATION OF DISPUTES

between

THE TRUSTEES OF THE
UNITE HERE NATIONAL HEALTH FUND AND
THE TRUSTEES OF THE
UNITE HERE NATIONAL RETIREMENT FUND,
Petitioners,

and

SYDNEY A. BUSH CO., INC.,
Respondent.

**NOTICE OF INTENTION
TO ARBITRATE**

Sir(s):

PLEASE TAKE NOTICE that pursuant to the Collective Bargaining Agreement (hereinafter, the "Agreement"), between The Intimate Apparel Embroidery, Belt & Allied Workers Union, Local 62-32, UNITE HERE, the Amalgamated Ladies' Garment Cutters' Union, Local 10, UNITE HERE; and the Associated Corset & Brassiere Manufacturers, Inc. entered into by Sydney A. Bush Co., Inc. (hereinafter, the "Respondent"), and upon notice by The Trustees of the UNITE HERE National Health Fund and The Trustees of the UNITE HERE National Retirement Fund (hereinafter, the "Petitioners"), an arbitration will be held before Dr. Philip Ross of 525 West End Avenue, New York, New York 10024 (hereinafter, the "Arbitrator"), designated pursuant to the Agreement, on May 30, 2007, at 11:00 A.M., at the Offices of the Laundry, Dry Cleaning and Allied Workers Joint Board, UNITE HERE! 275 7th Avenue, 7th Floor, New York, New York 10001, seeking an award against you for:

1. Delinquent contributions due and owing to Petitioner, The Trustees of the UNITE HERE National Health Fund, for the period of 10/01/06-04/30/07 in the estimated amount of \$2,334.96, together with interest at the rate of 9% as provided by the giving Collective Bargaining Agreement; and
2. Delinquent contributions due and owing to Petitioner, The Trustees of the UNITE HERE National Retirement Fund, for the period of 10/01/06-04/30/07 in the estimated amount of \$651.38, together with interest at the rate of 9% as provided by the giving Collective

Bargaining Agreement.

together with INTEREST, ARBITRATOR'S FEES and EXPENSES, ATTORNEY'S FEES and the cost of the AUDIT, if awarded.

PLEASE TAKE FURTHER NOTICE that unless you apply to stay this arbitration within twenty (20) days after the service of this notice upon you, you shall be precluded from objecting that a valid agreement was not made or has not been complied with and from asserting in court the bar of a limitation of time.

Dated: May 7, 2007
New York, New York

THE TRUSTEES OF THE
UNITE HERE NATIONAL HEALTH FUND AND
THE TRUSTEES OF THE
UNITE HERE NATIONAL RETIREMENT FUND

By: 

Mark Schwartz, Esq. MS 0148
Attorney for Petitioners
730 Broadway, 10th Floor
New York, New York 10003-9511
(212) 539-5275

Account No. 062I04958

Certified Return Receipt No. 7006 2150 0000 7834 7961

Please address all Inquires to:
Annie Habeeb at (212) 539-4231

In the Matter of
ARBITRATION OF DISPUTES

between

THE TRUSTEES OF THE
UNITE HERE NATIONAL HEALTH FUND AND
THE TRUSTEES OF THE
UNITE HERE NATIONAL RETIREMENT FUND,
Petitioners,

and

SYDNEY A. BUSH CO., INC.,
Respondent.

**SUBPOENA
DUCES TECUM**

To: Sydney A. Bush Co., Inc.
P.O. Box 54-0287
Bronx, New York 10454-0287

GREETING:

WHEREAS, an action has been commenced before the Honorable Philip Ross, Impartial Chairman, between The Trustees of the UNITE HERE National Health Fund and The Trustees of the UNITE HERE National Retirement Fund (hereinafter, the "Petitioners"), and Sydney A. Bush Co., Inc. (hereinafter, the "Respondent"), who are all the parties named in said action,

NOW, THEREFORE, YOU ARE COMMANDED to appear and attend before the Honorable Philip Ross, Impartial Chairman, at the Laundry, Dry Cleaning and Allied Workers Joint Board, UNITE HERE! 275 7th Avenue, 7th Floor, New York, New York 10001, on the 30th day of May 2007, at 11:00 A.M. in the morning, and at any recessed or adjourned date for the giving of testimony on all matters relevant to the arbitration hearing,

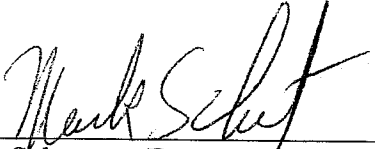
AND YOU ARE FURTHER COMMANDED to produce for examination at such time and place all your payroll records including but not limited to social security quarterly reports, weekly payroll journals, state employment insurance records, cash disbursements

book, and any other books or records which are required to determine your liability to the Petitioners for the period of 10/01/06-04/30/07.

WITNESS, Honorable Philip Ross, Impartial Chairman, at New York, New York on the 7th day of May 2007.

THE TRUSTEES OF THE
UNITE HERE NATIONAL HEALTH FUND AND
THE TRUSTEES OF THE
UNITE HERE NATIONAL RETIREMENT FUND

By:


Mark Schwartz, Esq. – MS 0148
Attorney for Petitioners
730 Broadway, 10th Floor
New York, New York 10003-9511
(212) 539-5275

Account No. 062I04958

Certified Return Receipt No. 7006 2150 0000 7834 7961

EXHIBIT C

